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TREASURY FOR ROSELLEN ALBANO

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SUBJECT: POST INTELLECTUAL PROPERTY ACTION PLAN

Refs: State 56094

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Introduction and Summary

1. (SBU) On April 30, USTR announced that Argentina would remain on the Special 301 Priority Watch List for the thirteenth year in a row (Ref A). Intellectual property (IP) protection is significantly lacking in Argentina: Piracy rates of music CDs and movies are above South American averages and illegal downloads are growing rapidly with increased internet penetration; local pharmaceutical firms are routinely granted permission to market unlicensed copies of drugs using appropriated foreign company safety and efficacy data; and products with false trademarks can be purchased in street markets all across the country. (See ref B.) Enforcement of generally TRIPS-consistent IP legislation is weak and there is little GoA will to improve IP protection, except within the customs and tax authorities. To address these shortfalls, Post has developed an action plan that targets Mission-wide resources toward four broad areas, ordered by the depth and breadth of their potential impact: (1) support private sector-recommended improvements to current GoA IPR legislation; (2) encourage GoA regulation ("reglamentacion") of existing pro-IPR legislation; (3) work with GoA enforcement entities to better coordinate their currently disparate and weak IPR protection efforts; (4) target USG resources to train GoA officials in improved IP protection and enforcement methods; and (4) educate the Argentine public on the importance and value to Argentina of protecting intellectual property. The action plan also suggests strategies to address shortfalls in protection of pharmaceutical data confidentiality and the GoA's unwillingness to restrict domestic health approvals of generic copies of drugs which have patent applications in process. Post's IP action plan is a Mission-wide initiative that seeks to coordinate efforts of State's Economic and Public Affairs sections, DoC's Foreign Commercial Service, DHS' Immigration and Customs Enforcement unit, and USDA's Foreign Agricultural Service to tackle this serious problem. End

Summary.

----- IPR Best Practices a Guide -----

¶2. (SBU) Post's IP Action Plan used best practices developed during State/EB's 2004 IP conference in Hong Kong as an initial guide. It was fleshed out with significant assistance from colleagues in EEB's Intellectual Property Enforcement office, the Department of Commerce, and the U.S. Patent and Trademark Office, as well as from Post's Foreign Commercial and Agricultural Services, Department of Homeland Security, and Public Affairs office. The goal was to create an ambitious but workable plan which identifies and prioritizes those areas where we can have an impact, while taking into account the limited cooperation to be expected from the GoA.

----- Promoting Better IPR Legislation and Treaty Obligations -----

¶3. (SBU) The GoA continues to insist that its IPR legislation is world class and TRIPS-consistent, and to date has shown little interest in considering proposals to modify current laws. The 2003 patent law, fruit of a USG-GoA bilateral agreement which resolved a WTO dispute, did provide important new injunctive relief remedies though its application to date has been generally problematic. In addition, continuing delays in patent adjudication reduce the effective period of protection for patents, which may violate TRIPS (the WTO Agreement on Trade-related Aspects of Intellectual Property Rights). The copyright law needs to be modernized, to specifically include modern technologies such as the internet, but is thought to be generally effective. Argentina's trademark law is inadequate; some private sector representatives argue it does not comply with

TRIPS due to its de minimus penalties which lack deterrent effect. Upgrading this trademark law could significantly improve Argentina's IPR regime.

¶4. (SBU) Given GoA sensitivities, direct lobbying for improved IP legislation would be counterproductive. Instead, Post's strategy is to work with business chambers and like-minded diplomatic missions and members of the Argentine Congress to build support for legislative and treaty accession initiatives including. We are targeting a trademark law modification drafted by members of the American Chamber's (AmCham) IP committee. We are also supporting EU efforts to encourage GoA accession to the World IP Organization's (WIPO's) Patent Cooperation Treaty and the Madrid Protocol on trademarks.

----- Encouraging GoA Regulation of Existing Pro-IPR Laws -----

¶5. (SBU) The efficacy of some potentially TRIPS-plus IP legislation has been limited by a lack of GoA follow-up in defining regulations that detail how the law is to be implemented. For example, a December 2004 law authorizes Customs to detain/seize any IPR infringing imports and exports, a very positive step in patent, copyright and trademark enforcement. However, GoA Customs authorities have not been able to enforce this law absent regulations that specify procedures. Drafting and publishing these regulations would not require any further congressional action. To expedite the regulation and implementation of this important law, Post is working with Economy Ministry and Customs authorities to break down inter-agency roadblocks and is briefing and encouraging American Chamber members, U.S. pharmaceutical players, and other diplomatic mission to engage the GoA independently on this.

----- Coordinate Disparate and Weak GOA IPR Enforcement -----

¶6. (SBU) Rampant IP piracy and counterfeiting are directly linked to a lack of coordinated efforts by GoA law enforcement agencies, including Customs authorities and both federal and provincial police, prosecutors and judges. To address this, Post is organizing a DOJ-sponsored program in August that will bring together many of

these GoA IPR enforcement entities, along with private representatives of IPR interests, to facilitate the development of an Argentine-specific "best practices" manual of how to process an IPR violation from investigation to court case.

¶7. (SBU) Separately, GoA tax and customs authorities have formed an Anti-Piracy Committee, with private sector participation, to solicit intelligence on trademark infringing shipments. Post's IPR officer is participating in the committee's monthly meetings to monitor progress, seeking to identify areas where USG or additional U.S. private sector assistance can be helpful. Post's Immigration and Customs Enforcement office has arranged for the Department of Homeland Security in Washington to offer technical assistance to Argentine Customs as they attempt to get the registry off the ground. Post is also working with local representatives of the movie and music industries to encourage their active cooperation of local law enforcement to better target enforcement efforts.

Education: Training and Public Outreach

¶8. (SBU) To develop a culture of IP compliance in Argentina, it is essential to change the widespread perception that IP crimes do not hurt Argentine interests. Significant USG and private sector resources are available to train GoA officials. These include funds from USPTO, DOC, as well as State/PAS and also possibly from the local business chamber (CAEME) representing research-based pharmaceuticals in Argentina. USPTO has offered partial funding to permit additional GoA patent and trademark officials to attend training courses. CAEME has agreed to consider helping fund per

diem expenses of some GoA officials attending USPTO-sponsored courses.

¶9. (SBU) Post also hosted AmCham's launch of a contest, aimed at college students and young professionals, to increase awareness of the value of IP protection (Ref C). AmCham intends this to be the first of many contests, some of which will be directed at other demographics, and Post will continue to work with the AmCham as such efforts increase.

¶10. (SBU) Embassy will seek to use outreach opportunities by all sections to emphasize the value for Argentina in protecting innovation. All Embassy officers will be offered pro-IPR theme talking points to use in public presentations, especially at youth audiences. The emphasis will be on the benefits for Argentina of improved IP protection for creative content. Our first such effort under this plan was an editorial, with the Ambassador's byline, published in business-oriented daily "El Cronista Comercial" (ref C). The editorial highlighted the future importance for young Argentines of better protection for creative efforts, and cited the recent news that Argentine scientists found a way to get cows to produce insulin.

Data Confidentiality/Linkage

¶11. (SBU) Flaws in the GoA IPR regime have hit the Argentine research-based pharmaceutical industry particularly hard. One of these flaws is the issue of data confidentiality - ensuring that private information belonging to one company, especially research data developed to determine the safety and efficacy of a new medication, remains private and not used by another company. Another major issue is linkage, which would make health authority approval of a new medication contingent upon a check that no conflicting patent or patent application exists. Under Argentine law, market approval decisions about products are unrelated to patents (i.e., there is no linkage). Instead, the GoA must accept safety and efficacy data belonging to the company that did the research, along with the approval by health authorities in one of several foreign countries, including the U.S. However, this information is often presented in Argentina by a company that wishes to market illegal copies. Accepting the data in such cases appears to violate the principle of "data confidentiality" found in TRIPS Article 39.3. Finding a solution to either or both of these problems will probably require either new legislation or an

executive decree, neither of which will be easily obtained. However, Post has already begun working closely with pharmaceutical firms (Ref D) to develop a strategy to make progress in this difficult area.

Comment

¶12. (SBU) It is clearly in the USG's interest to improve IP protection in Argentina. It is also very much in the interest of an Argentine nation with a well-educated, creative population. Post's IP action plan is a Mission-wide initiative that seeks to build a culture of IP compliance and to work with the GoA improve Argentine IP enforcement mechanisms. We have circulated copies to our IP action colleagues in the region who share similar concerns and look forward to sharing thoughts and ideas with them to identify areas where coordinated efforts may be worthwhile.

¶13. (U) To see more Buenos Aires reporting, visit our classified website at: [< /a>](http://www.state.sgov.gov/p/wha/buenosaires)

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